

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA

ELITE PHYSICIAN SERVICES, LLC,)	
)	
Plaintiff,)	No. 1:06-CV-86
)	
v.)	<i>Mattice/Carter</i>
)	
CITICORP CREDIT SERVICES, INC. (USA),)	
)	
Defendant.)	

**DEFENDANT’S REPLY IN SUPPORT OF
ITS MOTION TO DISMISS OR TRANSFER**

Defendant’s Exhibit D

economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated by this Agreement are consummated as originally contemplated to the greatest extent possible.

SECTION 10.05. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and undertakings, both written and oral, between Elite and CPSI with respect to the subject matter hereof and thereof.

SECTION 10.06. Assignment. This Agreement may not be assigned by operation of law or otherwise without the express written consent of Elite and CPSI (which consent may be granted or withheld in the sole discretion of Elite and CPSI); provided, however, that CPSI may assign this Agreement or any of its rights and obligations hereunder to one or more of its Affiliates without the consent of Elite.

SECTION 10.07. Third Party Beneficiaries. Except for the provisions of Article VI relating to indemnified parties, this Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their heirs, legatees, successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

SECTION 10.08. Independent Contractor. Elite and CPSI, and their respective employees, agents, representatives, contractors and subcontractors and their employees shall provide services under this Agreement as independent contractors and nothing contained herein shall be deemed to create any partnership, joint venture, employment relationship, or relationship of principal and agent between Elite and CPSI or any of their Affiliates, related business entities, officers, employees, agents, representatives, contractors and subcontractors and their employees, or to provide either party with any right, power or authority, whether express or implied, to create any such duty or obligation on behalf of the other party.

SECTION 10.09. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State. All actions and proceedings arising out of or relating to this Agreement shall be heard and determined exclusively in any New York state or federal court sitting in the Borough of Manhattan. The parties hereto hereby (a) submit to the exclusive jurisdiction of any state or federal court sitting in the Borough of Manhattan for the purpose of any action or proceeding arising out of or relating to this Agreement brought by any party hereto, and (b) irrevocably waive, and agree not to assert by way of motion, defense, or otherwise, in any such action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the action or proceeding is brought in an inconvenient forum, that the venue of the action or proceeding is improper, or that this Agreement or the transactions contemplated by this Agreement may not be enforced in or by any of the above-named courts.